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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 WHAM-O, INC.,

12 Plaintiff,

13 v.

14 SPORT FUN, INC.,

15 Defendant.

No. C06-6656 MHP

Action Filed: October 26, 2006

PERMANENT INJUNCTION
AND CONSENT JUDGMENT

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 Plaintiff Wham-O, Inc. and Defendant Sport Fun, Inc. do hereby consent to entry of a
2 Consent Judgment and Permanent Injunction as follows:

3 Plaintiff Wham-O, Inc. having filed a complaint pursuant to the Lanham Act against
4 and Defendant Sport Fun, Inc. arising out of Defendant's alleged sale of goods bearing
5 infringing use of Wham-O's yellow color trademark and the Court having reviewed the
6 complaint and other pleadings, and the assent of the parties.

7 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that a
8 Permanent Injunction is entered against Defendant as follows:

9 1. That Defendant and its officers, agents, owners, employees, confederates,
10 attorneys and any persons in active concert or participation with them be temporarily,
11 preliminarily and permanently enjoined and restrained from:

12 a. Using the color yellow on the elongated length of a waterslide toy and/or as
13 described in United States Federal Trademark Reg. No. 1,432,069 in connection with the
14 advertising, manufacturing, offering for sale, distribution or sale of waterslide toy products
15 or any other goods that are not authorized by Wham-O;

16 b. Using the color yellow on the elongated length of a waterslide toy and/or as
17 described in United States Federal Trademark Reg. No. 1,432,069 in any manner likely to cause
18 others to believe that any of Defendant's goods are made by, distributed by, associated or
19 connected with Wham-O's goods;

20 c. Committing any other acts in connection with the color yellow on the
21 elongated length of a waterslide toy and/or as described in United States Federal Trademark Reg.
22 No. 1,432,069 in any manner calculated to cause actual or potential purchasers to believe
23 that Wham-O is the source or sponsor of Defendant's goods; and

24 d. Assisting, aiding or abetting any supplier, distributor or any other person or
25 business entity in engaging in or performing any of the activities referred to in the above
26 subparagraphs a through c;

27 2. That Defendant destroy any waterslides or waterslide packaging currently in its
28 possession, custody or control which uses the color yellow on the elongated length of a

1 waterslide toy and/or as described in United States Federal Trademark Reg. No. 1,432,069.

2 3. The Court retains jurisdiction to enforce or modify this Permanent Injunction as
3 may be appropriate.

4 Defendant is hereby given notice that it shall be deemed to have actual notice of the
5 issuance and terms of this Permanent Injunction and that any act by it in violation of any of
6 the terms thereof may be considered and prosecuted as contempt of this Court.

7 IT IS SO ORDERED.

8 DATED: November 1, 2006.

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11 UNITED STATES DISTRICT JUDGE
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13 HOWARD
14 RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

15 A Professional Corporation
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1 APPROVED AS TO FORM:

2 DATED: October 31, 2006.

JEFFREY E. FAUCETTE
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

5 By: _____/s/
JEFFREY E. FAUCETTE

6 Attorneys for Plaintiff WHAM-O, INC.

8 DATED: October __, 2006.

MONICA CRUZ THORNTON
SELMAN BREITMAN LLP

11 By: _____
MONICA CRUZ THORNTON

12 Attorneys for Defendant
SPORT FUN, INC.

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